Hong Kong Police Force refused to provide the costs and particulars of tear gas rounds procured between 2014 and 2019 (Related to Code on Access to Information)

Investigation Report

The Complaints

This Office received two complaints from a complainant against the Hong Kong Police Force ("HKPF") for allegedly breaching the Code on Access to Information ("the Code") in handling his two information requests.

Case I

2. On 6 December 2019, the complainant emailed HKPF to request the following information:

(1) The cost of procurement of tear gas rounds during the following time respectively:

(a) January to September of 2014;
(b) October to December of 2014;
(c) Between 2015 and 2018 annually;
(d) January to June of 2019;
(e) June to September of 2019; and
(f) October to November of 2019.

(2) The cost incurred in procuring tear gas rounds from Mainland China in 2019.

Case II

3. By email of 5 December 2019, the complainant requested HKPF to provide him with the following information:

(1) For the tear gas rounds procured in the past five years,

(a) the country of origin; and
(b) the name of manufacturer.

(The complainant requested the breakdown to be listed on a yearly basis.)

(2) For the tear gas rounds procured in the past five years,

(a) the composition;
(b) the velocity of explosion;
(c) the maximum temperature during combustion;
(d) the possible health hazards provided by the manufacturer; and
(e) safety distance of deployment as advised by the manufacturer.

(The complainant requested the information to be listed according to each type of tear gas round procured.)

(3) The total number of tear gas rounds procured during the following periods respectively:

(a) January to September of 2014;
(b) October to December of 2014;
(c) 2015;
(d) 2016;
(e) 2017;
(f) 2018;
(g) January to June of 2019;
(h) June to September of 2019; and
(i) October to November of 2019.

(4) For the tear gas rounds procured within 2019, the number of times that the tear gas rounds had been tested and whether such test(s) had been satisfied; if not, the number of substandard or unqualified tear gas rounds returned to the manufacturer.

(5) The manufacturer(s)'s guideline(s) of tear gas rounds procured in the past five years.

(6) The tender specifications of tear gas rounds procured in the last five years.

4. In **Case I**, HKPF replied to the complainant on 13 December 2019, refusing to provide the requested information to him. The Department explained that the requested information was sensitive in nature, and cited paragraph 2.6(f) of the Code[1] as reason for refusal.

5. In **Case II**, on 8 January 2020, HKPF informed the complainant that it had not received his information request of 5 December 2019 (**paragraph 3** above) until that request was forwarded to the Department in his follow-up email of 2 January 2020. On 15 January 2020, HKPF replied to the complainant by email that his information request could not be acceded to. Besides quoting paragraph 2.6(f) of the Code (**Note 1**) as the reason for refusal, HKPF explained to the complainant that information about the composition and other details of tear gas, its testing and the guidelines concerned the operational matters of the Police and the disclosure of such may allow those with ill intent to disrupt the Department's enforcement actions.

6. The complainant considered HKPF's refusals to be unreasonable and in breach of the Code.

Our Findings

Code on Access to Information

7. The Code requires all Government departments to disclose information kept by the Government as far as possible to enable adequate public understanding of the Government and its services,

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[1] Paragraph 2.6(f) of the Code: Information the disclosure of which would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property.

unless there are specific reasons set out in Part 2 of the Code for not doing so.

HKPF's Explanation

8. HKPF stated that, since June 2019, a series of unprecedented large-scale public events and related illegal activities had occurred across the territory with increased scale and intensity of violence. The illegal acts had been threatening public order and safety, and also people's lives and properties. HKPF needed to take appropriate actions including the use of tear gas to curb violence and disperse the crowd, in order to restore public safety and order.

9. HKPF explained that, the requested procurement details of tear gas rounds were all closely related to the Department's operational capability and effectiveness, particularly in times of turbulence. Disclosure of such information might allow potential lawbreakers or those with ill intent an opportunity to disrupt the Department's enforcement actions. HKPF explained to this Office with more details of how the disclosure of information would disrupt the Department's enforcement actions. However, in order to ensure the efficacy of HKPF's work, the Department considered it inappropriate to disclose the details to the public. In short, HKPF considered the said disruption would impair and constrain the Department's capability in upholding their statutory duties stated in the Police Force Ordinance (Cap.232), thereby harming or prejudicing the preservation of peace, public safety or order, or the preservation of property.

10. HKPF further pointed out that they noticed the two requests submitted by the complainant were somehow inter-related. HKPF believed that the disclosure of the requested information in the two cases, together with other relevant information gathered from different channels, could form an overall picture of the situation and such disclosure would allow potential lawbreakers to disrupt the Department's enforcement actions.

11. Therefore, HKPF considered the requested information under both **Case I** and **Case II** to be sensitive and should be withheld under paragraph 2.6(f) of the Code.

12. On the other hand, HKPF claimed that paragraph 2.1.2(a) of the Guidelines on Interpretation and Application of the Code ("the Guidelines")[2] was not an absolute requirement and elaboration of the justification would only be given where applicable. Inclusion of the elaboration in **paragraphs 8 to 10** above in the replies to the complainant would facilitate those with ill intent to devise measures to disrupt HKPF's operations.

Our Comments

13. The disclosure of requested information in **Case I** and **Case II** would give a clear and comprehensive picture of HKPF's procurement of tear gas rounds, including its source of supply (country and manufacturer), specific requirements in the tender, total costs and number of tear gas procured, details on the functions and limitations of the tear gas rounds. We agree with HKPF that the disclosure of such information would enable the information holder to devise measures to disrupt HKPF's law enforcement actions.

14. The complainant also claimed that there was strong public interest to support disclosure. At this stage we do not find any overwhelming public interest in disclosing the requested information that would outweigh the harm or prejudice that could result. Therefore, we consider it not unreasonable for the HKPF to deny the complainant's information request by invoking paragraph 2.6(f) of the Code in both cases.

15. Nevertheless, we find that, when HKPF refused the information request in **Case I**, it had failed to elaborate the

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[2] Paragraph 2.1.2(a) of the Guidelines: When a request for information is to be refused or partially refused, the applicant concerned must be informed of the reasons for refusal quoting all the relevant paragraph(s) in Part 2 of the Code on which the refusal is based with appropriate elaboration to justify invoking the relevant paragraph(s) in Part 2 of the Code (where applicable).

justifications for invoking Paragraph 2.6(f) of the Code (**paragraph 4** above) as required by the Guidelines (**Note 2**). In **Case II** we see that HKPF had given some explanations (**paragraph 5** above). We consider that the explanations given by HKPF in **paragraphs 8 to 10** above did not involve any sensitive information regarding the Department's operations but should be useful in helping the complainant understand the justifications of the Department's decision. We urge HKPF to provide more elaboration or explanation as far as practicable in handling information requests in future.

Conclusion

16. In the light of the analysis in **paragraphs 13 to 15** above, this Office considers that the complaint under **Case I** is **unsubstantiated but with other inadequacies found** and the complaint under **Case II** is **unsubstantiated.**

Office of The Ombudsman
June 2020